

AMENDED IN ASSEMBLY APRIL 18, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 800**

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**Introduced by Assembly Members Lieu, Brownley, and Krekorian**  
**(Coauthors: Assembly Members Karnette and Mendoza)**

February 22, 2007

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An act to amend Section 5411.5 of, and to add Section 5411.6 to, the Health and Safety Code, and to amend ~~Sections 13201 and~~ *Section* 13271 of the Water Code, relating to water.

### LEGISLATIVE COUNSEL'S DIGEST

AB 800, as amended, Lieu. ~~Water quality. Discharge of hazardous substance, sewage, or other waste: notification.~~

(1) Existing law generally requires a person who, without regard to intent or negligence, causes or permits any sewage or other waste, or the effluent of treated sewage or other waste, to be discharged in or on any waters of the state, or discharged in or deposited where it is, or probably will be, discharged in or on any waters of the state, as soon as that person has knowledge of the discharge, to immediately notify the local health officer or the director of environmental health of the discharge. A person who fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine that is not less than \$500 nor more than \$1,000, or imprisonment for less than one year, or both.

This bill, instead, would provide that a person who fails to give notice in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine of not more than \$5,000 or imprisonment in a

county jail for less than one year, or both. The bill would also subject that person to a civil penalty in an amount not to exceed \$1,000. The bill would provide that a person who willfully violates, or knowingly or intentionally fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000 or imprisonment in a county jail for up to one year, or both. The bill would also subject that person to a civil penalty in an amount not to exceed \$5,000.

(2) The Porter-Cologne Water Quality Control Act generally requires a person who causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, as soon as that person has knowledge of the discharge and other requirements are met, to immediately notify the Office of Emergency Services of the discharge in accordance with specified spill reporting requirements. The act requires the Office of Emergency Services to immediately notify the appropriate California regional water quality control board and the local health officer and administrator of environmental health of the discharge. A person who fails to notify in accordance with these requirements, with a certain exception, is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000, imprisonment for not more than one year, or both.

This bill, instead, would require that person, as soon as that person has knowledge of the described discharge, to immediately notify the local health officer and the Office of Emergency Services of the discharge. The Office of Emergency Services would then be required to immediately notify the appropriate regional board and the director of environmental health of the discharge. The bill would impose a state-mandated local program by expanding the definition of a crime.

(3) The bill would ~~provide that~~ *exempt* a person ~~shall not be subject to~~ from criminal liability imposed under both (1) and (2), above, for the same act or failure to act.

~~(4) The act prescribes specific eligibility requirements for 8 of the 9 members of a California regional water quality control board.~~

~~This bill would require that member of the regional board for which no specific eligibility requirements are established to have special competence in the area of public health.~~

~~(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5411.5 of the Health and Safety Code is  
2 amended to read:

3 5411.5. (a) Any person who, without regard to intent or  
4 negligence, causes or permits any sewage or other waste, or the  
5 effluent of treated sewage or other waste to be discharged in or on  
6 any waters of the state, or discharged in or deposited where it is,  
7 or probably will be, discharged in or on any waters of the state, as  
8 soon as that person has knowledge of the discharge, shall  
9 immediately notify the local health officer or the director of  
10 environmental health of the discharge.

11 (b) Except as provided in subdivision (c), any person who fails  
12 to provide the notice required by this section is guilty of a  
13 misdemeanor, and shall be punished by a fine of not more than  
14 five thousand dollars (\$5,000) or imprisonment in a county jail for  
15 less than one year, or both.

16 (c) Any person who willfully violates, or knowingly or  
17 intentionally fails to provide the notice required by this section is  
18 guilty of a misdemeanor, and shall be punished by a fine of not  
19 more than twenty thousand dollars (\$20,000) or imprisonment in  
20 a county jail for less than one year, or both.

21 (d) The notification required by this section shall not apply to  
22 a discharge authorized by law and in compliance with waste  
23 discharge requirements or other requirements established by the  
24 appropriate regional water quality control board or the State Water  
25 Resources Control Board.

26 (e) A person shall not be subject to criminal liability imposed  
27 pursuant to this section and to criminal liability imposed pursuant  
28 to Section 13271 of the Water Code for the same act or failure to  
29 act.

30 SEC. 2. Section 5411.6 is added to the Health and Safety Code,  
31 to read:

32 5411.6. (a) Except as provided in subdivision (b), a person  
33 who, without regard to intent or negligence, fails to provide the

1 notice required by subdivision (a) of Section 5411.5 is subject to  
2 a civil penalty imposed by the court in an amount not to exceed  
3 one thousand dollars (\$1,000).

4 (b) A person who willfully violates, or knowingly or  
5 intentionally fails to provide the notice required by subdivision  
6 (a) of Section 5411.5 is subject to a civil penalty imposed by the  
7 court in an amount not to exceed five thousand dollars (\$5,000).

8 (c) The remedies described in this section are in addition to,  
9 and do not supersede or limit, any other civil or criminal remedy.

10 SEC. 3 ~~Section 13201 of the Water Code is amended to read:~~

11 ~~13201. (a) There is a regional board for each of the regions~~  
12 ~~described in Section 13200. Each board shall consist of the~~  
13 ~~following nine members appointed by the Governor, each of whom~~  
14 ~~shall represent and act on behalf of all the people and shall reside~~  
15 ~~or have a principal place of business within the region:~~

16 ~~(1) One person associated with water supply, conservation, and~~  
17 ~~production.~~

18 ~~(2) One person associated with irrigated agriculture.~~

19 ~~(3) One person associated with industrial water use.~~

20 ~~(4) One person associated with municipal government. Upon~~  
21 ~~the next vacancy occurring in this office on or after January 1,~~  
22 ~~2004, this person shall be a city council member or mayor.~~

23 ~~(5) One person associated with county government. Upon the~~  
24 ~~next vacancy occurring in this office on or after January 1, 2004,~~  
25 ~~this person shall be a county supervisor.~~

26 ~~(6) One person from a responsible nongovernmental~~  
27 ~~organization associated with recreation, fish, or wildlife.~~

28 ~~(7) Three persons not specifically associated with any of the~~  
29 ~~foregoing categories, two of whom shall have special competence~~  
30 ~~in areas related to water quality problems, and one of whom shall~~  
31 ~~have special competence in the area of public health.~~

32 ~~(b) All persons appointed to a regional board shall be subject~~  
33 ~~to Senate confirmation, but shall not be required to appear before~~  
34 ~~any committee of the Senate for purposes of such confirmation~~  
35 ~~unless specifically requested to appear by the Senate Committee~~  
36 ~~on Rules.~~

37 ~~(c) Insofar as practicable, appointments shall be made in such~~  
38 ~~manner as to result in representation on the board from all parts~~  
39 ~~of the region.~~

1 ~~(d) Notwithstanding subdivision (a), if appointments cannot be~~  
2 ~~made pursuant to paragraph (5) of subdivision (a) because of the~~  
3 ~~requirements of Section 13388, those appointments may be made~~  
4 ~~of persons not specifically associated with any category.~~

5 ~~SEC. 4.~~

6 *SEC. 3.* Section 13271 of the Water Code is amended to read:

7 13271. (a) (1) Except as provided by subdivision (b), any  
8 person who, without regard to intent or negligence, causes or  
9 permits any hazardous substance or sewage to be discharged in or  
10 on any waters of the state, or discharged or deposited where it is,  
11 or probably will be, discharged in or on any waters of the state,  
12 shall, as soon as that person has knowledge of the discharge,  
13 immediately notify the local health officer and the Office of  
14 Emergency Services of the discharge in accordance with the spill  
15 reporting provision of the state toxic disaster contingency plan  
16 adopted pursuant to Article 3.7 (commencing with Section 8574.16)  
17 of Chapter 7 of Division 1 of Title 2 of the Government Code.

18 (2) The Office of Emergency Services shall immediately notify  
19 the appropriate regional board and the director of environmental  
20 health of the discharge. The regional board shall notify the state  
21 board as appropriate.

22 (3) Upon receiving notification of a discharge pursuant to this  
23 section, the local health officer and the director of environmental  
24 health shall immediately determine whether notification of the  
25 public is required to safeguard public health and safety. If so, the  
26 local health officer and the director of environmental health shall  
27 immediately notify the public of the discharge by posting notices  
28 or other appropriate means. The notification shall describe  
29 measures to be taken by the public to protect the public health.

30 (b) The notification required by this section shall not apply to  
31 a discharge in compliance with waste discharge requirements or  
32 other provisions of this division.

33 (c) Any person who fails to provide the notice required by this  
34 section is guilty of a misdemeanor and shall be punished by a fine  
35 of not more than twenty thousand dollars (\$20,000) or  
36 imprisonment in a county jail for not more than one year, or both.  
37 Except where a discharge to the waters of this state would have  
38 occurred but for cleanup or emergency response by a public agency,  
39 this subdivision shall not apply to any discharge to land which  
40 does not result in a discharge to the waters of this state.

1 (d) Notification received pursuant to this section or information  
2 obtained by use of that notification shall not be used against any  
3 person providing the notification in any criminal case, except in  
4 a prosecution for perjury or giving a false statement.

5 (e) For substances listed as hazardous wastes or hazardous  
6 material pursuant to Section 25140 of the Health and Safety Code,  
7 the state board, in consultation with the Department of Toxic  
8 Substances Control, shall by regulation establish reportable  
9 quantities for purposes of this section. The regulations shall be  
10 based on what quantities should be reported because they may  
11 pose a risk to public health or the environment if discharged to  
12 groundwater or surface water. Regulations need not set reportable  
13 quantities on all listed substances at the same time. Regulations  
14 establishing reportable quantities shall not supersede waste  
15 discharge requirements or water quality objectives adopted  
16 pursuant to this division, and shall not supersede or affect in any  
17 way the list, criteria, and guidelines for the identification of  
18 hazardous wastes and extremely hazardous wastes adopted by the  
19 Department of Toxic Substances Control pursuant to Chapter 6.5  
20 (commencing with Section 25100) of Division 20 of the Health  
21 and Safety Code. The regulations of the Environmental Protection  
22 Agency for reportable quantities of hazardous substances for  
23 purposes of the Comprehensive Environmental Response,  
24 Compensation, and Liability Act of 1980, as amended (42 U.S.C.  
25 Sec. 9601 et seq.) shall be in effect for purposes of the enforcement  
26 of this section until the time that the regulations required by this  
27 subdivision are adopted.

28 (f) (1) The state board shall adopt regulations establishing  
29 reportable quantities of sewage for purposes of this section. The  
30 regulations shall be based on the quantities that should be reported  
31 because they may pose a risk to public health or the environment  
32 if discharged to groundwater or surface water. Regulations  
33 establishing reportable quantities shall not supersede waste  
34 discharge requirements or water quality objectives adopted  
35 pursuant to this division. For purposes of this section, “sewage”  
36 means the effluent of a municipal wastewater treatment plant or a  
37 private utility wastewater treatment plant, as those terms are  
38 defined in Section 13625, except that sewage does not include  
39 recycled water, as defined in subdivisions (c) and (d) of Section  
40 13529.2.

1 (2) A collection system owner or operator, as defined in  
2 paragraph (1) of subdivision (a) of Section 13193, in addition to  
3 the reporting requirements set forth in this section, shall submit a  
4 report pursuant to subdivision (c) of Section 13193.

5 (g) Except as otherwise provided in this section and Section  
6 8589.7 of the Government Code, a notification made pursuant to  
7 this section shall satisfy any immediate notification requirement  
8 contained in any permit issued by a permitting agency. When  
9 notifying the local health officer and the Office of Emergency  
10 Services, the person shall include all of the notification information  
11 required in the permit.

12 (h) For the purposes of this section, the reportable quantity for  
13 perchlorate shall be 10 pounds or more by discharge to the  
14 receiving waters, unless a more restrictive reporting standard for  
15 a particular body of water is adopted pursuant to subdivision (e).

16 (i) A person shall not be subject to criminal liability imposed  
17 pursuant to this section and to criminal liability imposed pursuant  
18 to Section 5411.5 of the Health and Safety Code for the same act  
19 or failure to act.

20 ~~SEC. 5.~~

21 *SEC. 4.* No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.